



Tax Information Bulletin

STATE BOARD
OF EQUALIZATION

ISSUED QUARTERLY
June 1996

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1. Annual Taxpayers' Bill of Rights Hearing Planned

Each year, the Members of the Board of Equalization hold a public hearing to give taxpayers an opportunity to present recommendations regarding legislation, the quality of agency services, and other topics related to the Board's administration of its tax programs.

This year, the statewide hearing is scheduled for Wednesday, November 20, 1996, at 1:30 P.M., in the Board Room located on the first floor of Capitol Square, 450 N Street, Sacramento. (Any regional hearings that may be scheduled will be announced in the September bulletin.)

Although you do not need to be scheduled in advance to speak at the hearing, it would help us prepare if you contacted us before the hearing to let us know what your topic will be. If your proposal is complex or extensive, we encourage you to submit it in advance and then summarize it in your oral presentation.

To notify us of a topic you wish to discuss or to send written material in advance, please contact:

Taxpayers' Rights Advocate
P.O. Box 942879
Sacramento, CA 94279-0070
Telephone: 916-324-2798
Fax: 916-323-3319

2. Tax Talk '96 Teleconference Scheduled for October 8

Drawing together participants from 24 locations statewide and in Oregon and Nevada, Tax Talk is a "teleconference seminar" designed for tax professionals, business persons, and others who would like to learn more about how state and federal tax laws apply to businesses and individual taxpayers.

This year's conference will be held on Tuesday, October 8, 1996, and will feature speakers from the following agencies:

- State Board of Equalization
- Internal Revenue Service
- California Franchise Tax Board
- Employment Development Department

The seminar is sponsored by the participating agencies and the School of Business Administration at California State University, Sacramento, and is produced by the University Media Services.

Although not all seminar topics have yet been selected, the following have been identified to date: alternatives for clients unable to pay their taxes, common filing errors, employers' annual reconciliation reports, nonresident issues, office in the home, and the regulatory process and tax planning. The seminar will also feature discussions of late-breaking tax information.

Because the teleconference is live, attendees will have the opportunity to submit questions to the experts (question cards will be made available at each location, and site facilitators will call in the questions).

The tuition for the seminar is \$145 for those whose payment is received by September 6, 1996 (later registrants will be charged \$195).



Tuition includes lunch, refreshments, and class materials.

Tax Talk registrants can earn up to eight hours of credit toward the continuing education requirements of the California State Board of Accountancy, the Department of Consumer Affairs, and, for enrolled agents, the Internal Revenue Service.

Tax Talk brochures will be mailed in late June to previous attendees and others who have been identified as potential registrants. If you have not received a brochure by mid-July, you should request a copy by calling 916-845-7070. Or you can write to Conference Registration; P.O. Box 520; Rancho Cordova, CA 95741-0520. Space is limited, and some locations fill up quickly.

3. Tax Rate Decrease Takes Effect in Parts of Fresno County March 21, 1996

Fresno Metropolitan Projects Authority Tax Found Unconstitutional

Retailers should not report or collect the 0.10 percent Fresno Metropolitan Projects Authority (FMPA) district tax for sales or purchases made on or after March 21, 1996. The tax, which has been found unconstitutional, was in effect from July 1, 1993, through March 20, 1996. Commonly referred to as the "Arts to Zoo" tax, it applied to transactions in the City of Fresno and the surrounding "sphere of influence."

The combined sales and use tax rate in all areas of Fresno County is now 7.75 percent.

Tax Refund Program

The Board has initiated a program to refund the FMPA taxes collected. You may be eligible for a refund if you are a:

- Purchaser who paid the FMPA sales or use tax to a retailer
- Purchaser who paid the FMPA use tax directly to the Board
- Retailer who paid the FMPA sales tax to the Board for which you did not receive tax reimbursement from your customer

To be eligible for a refund, your claim must be for single or combined purchases totaling at least

\$5,000 (eligible purchases totaling \$5,000 will yield a \$5 refund).

All claims must include proof that you paid the tax.

☐ *If you are claiming a refund for FMPA tax that you paid to a retailer, the proof of payment can include such items as a copy of an invoice, a bill of sale, a purchase contract, or other document that includes the following information:*

- Name(s) of purchaser(s).
- Date of purchase.
- Name and address of vendor.
- A description of your purchase. (For vehicles, vessels, or airplanes, please include identification or license numbers.)
- The price you paid without the tax.

The receipt must show the amount of sales and/or use tax paid.

☐ *If you are claiming a refund for use tax paid directly to the Board — rather than to a retailer — you should indicate the amount of use tax paid and the date of payment. You should also provide proof of payment of the use tax, such as a copy of your sales and/or use tax return, and documentation of your purchase of the item for which the FMPA district use tax applied.*

☐ *If your claim represents sales tax billed to your customer for which you have not been reimbursed you should indicate the amount of nonreimbursed tax you paid to the Board and the date it was paid. You must provide proof that you paid the FMPA tax and that you were not previously, directly or indirectly, reimbursed by your customer.*

If your customer paid you for the property purchased, and that property included the FMPA tax in the sales price (a tax-included price), then you are considered to have been reimbursed for the tax. (For example, gasoline purchased from a gas station includes the applicable taxes in the per gallon price. When your customer pays you for the gasoline, you are considered to have been reimbursed for the taxes included in the per-gallon price.)



Credit Interest

Credit interest will be allowed on all claims and computed on a quarterly basis. Credit interest for July 1, 1993, through December 31, 1996, varies from 3% to 6%. For interest calculation purposes, please summarize your purchases by tax quarter: January through March, April through June, and so forth.

How to Apply for a Refund

You may use a Board of Equalization *Claim for Refund* form to request a refund, or you may write us a letter. Use of the claim form will expedite your request. All claims must be filed no later than March 31, 1997.

Claim Forms (BT-336)

Claim forms are available at Fresno libraries and from local Board offices. You may also order a claim form by calling our new toll-free number: 1-800-400-7115. The form includes instructions.

Letters

If you prefer to write a letter, you must file your claim in the name or names listed on the receipts you submit. If you are married, please file as husband and wife, including both names and driver's license numbers on the claim. If you purchased items with another person, both names must be on the claim. Invoices may be in either name on a joint claim.

If you file a claim as a business, please include the "DBA," Federal ID Number, and if applicable, your Seller's or Consumer Use Tax Permit number.

Please list your purchases, in date order, on a separate sheet of paper. Use the following headings:

- Date of purchase
- Vendor
- Description of purchase
- Amount of taxable purchase
- FMPA tax paid

Be sure to include proof that you have paid the FMPA tax (see previous page for acceptable types of proof).

Mail your letter to:

State Board of Equalization
Sales and Use Tax Department, MIC:39

P.O. Box 942759

Sacramento, CA 94279-7590

Taxable Leases

If you paid tax on your rental payments of leased property (except mobile transportation property), you may also be eligible for a refund of the FMPA tax paid. To be eligible, the rental payments subject to the tax must total at least \$5,000 or be included with other purchases that together total \$5,000. You will need to submit a copy of your lease agreement or billings that show that the FMPA tax was added or included.

If you are a lessor of tangible personal property and made a timely election to report and pay the tax based on the purchase price (on your sales and use tax return or directly to the vendor), you may qualify for a refund of the FMPA tax paid provided that those purchases totaled at least \$5,000 or when combined with other qualifying purchases totaled at least \$5,000.

If you are a lessee of mobile transportation equipment, you may not claim a refund of any tax reimbursement that your lessor charged. The term *mobile transportation equipment* includes equipment used for transporting persons or property for substantial distances. The term includes pickup trucks, but does not include passenger vehicles, trailers and baggage containers for hauling by passenger vehicles, or one-way rental trucks.

A lessor of mobile transportation equipment must pay tax based on either the purchase price of the equipment or on its fair rental value. If you are a lessor of such equipment, you may claim a refund of the FMPA tax whether you paid the tax based on the purchase price or based on the fair rental value. The claim will be allowed if you have evidence that your purchase amount or rental receipts, with or without other combined purchases, total at least \$5,000.

Fixed-Price Contracts

Do not collect or report the FMPA district tax on or after March 21, 1996 — even though you and your customer may have a fixed-price contract that specifies a tax rate that includes the 0.10 percent tax. Charges for sales tax or use tax should be adjusted to reflect the new lower rate.



4. Tax Rate Changes Take Effect April 1, 1996, in San Diego and Monterey Counties

In the March 1996 *Tax Information Bulletin* we advised retailers of the end of the tax rate rollback and tax credit programs in effect for San Diego and Monterey counties. Effective 12:01 a.m. on April 1, 1996, the sales and use tax rate for transactions in those counties returned to the pre-rollback rates of:

- 7.75 percent for San Diego County (see note in right column)
- 7.25 percent for Monterey County

Fixed-Price Contracts

On and after April 1, 1996, fixed-price contracts are also generally subject to the pre-rollback (higher) rates listed above. There is no provision in the Sales and Use Tax Law that specifically exempts fixed-price contracts from the requirement to return to the pre-rollback rates for San Diego and Monterey counties. However, as explained below, there may be certain sales that are subject to the earlier rollback rates, whether or not they occurred under a fixed-price contract.

Transactions that May be Subject to the Rollback Rates in Effect Through March 31, 1996

Under limited conditions, a transaction may be subject to the rollback rates of 7.00% for San Diego County and 6.50% for Monterey County. You can use these lower rates for sales agreements entered into prior to April 1, 1996, if:

- The sales agreement between you and the buyer specifically identified the goods to be delivered;
- The goods existed at the time the sales agreement was entered into; **and**
- The buyer paid for the goods in cash prior to April 1, 1996, or purchased them on a credit or layaway basis prior to April 1, 1996.

If the goods delivered were not specifically identified under the sales agreement until after March 31, 1996, the tax rate in effect on the date of delivery applies.

Leases

In the case of taxable leases, the rate in effect on or after April 1, 1996, will apply to lease

payments made on or after that date, even though the lease agreement was entered into prior to April 1, 1996.

Newspaper and Periodical Subscriptions

The rate changes in Monterey and San Diego counties apply to taxable subscription charges for newspapers and periodicals (tax applies to subscription charges for newspapers and periodicals that are delivered by means other than U.S. mail or common carrier). The lower (rollback) rates apply to deliveries made prior to April 1, 1996. The higher (pre-rollback) rates apply to deliveries made on or after April 1, 1996.

As provided by Regulation 1590, *Newspapers and Periodicals*, each delivery of a newspaper or periodical, under a subscription sale, is a separate sale transaction. When the sale is subject to tax, the retailer must report and pay tax based on the reporting period within which the delivery is made (the tax must be prorated if the subscription period encompasses different tax rates).



Note: For San Diego County, the full 7.75% tax rate applies to your San Diego transactions if:

- You are a retailer located in San Diego County and you sell or deliver merchandise within the county.
- You are a retailer located outside San Diego County who is *engaged in business* there. For example, you have any type of business location in the county; you deliver into the county using your own vehicles; or you have an agent or representative there who makes sales, takes orders, or makes deliveries.
- You are a dealer of vehicles, vessels, or aircraft, and you sell these items to persons who will register them in San Diego County.
- You collect tax on lease payments from lessees who use the leased property in San Diego County.

If your San Diego County transactions are not covered by any of the conditions listed above, you are not liable for the payment or collection of the 0.50 percent San Diego Regional Transportation Commission tax. However, your customer is still liable for the payment of the 0.50



percent tax for purchases made from you, for use in San Diego County. If desired, you may collect and report your customer's 0.50 percent tax liability as a courtesy to your customer.

5. Exemption Letters Provided to Retailers by Shipping Companies

If you sell and deliver tangible personal property to a purchaser in this state, you are generally liable for sales tax on the transaction. This is true even though your customer may provide you with (1) a copy of a "sales tax exemption letter" provided by a shipping company that states sales tax does not apply because the property will be delivered to them for eventual shipment out of state or (2) a copy of a partially completed bill of lading provided by the shipping company prior to shipment.

Unless you or your representative (1) deliver the purchased merchandise directly to the shipping company for shipment out of state, or (2) the shipping company picks up the merchandise from your place of business, for shipment out of state, your sale will generally be subject to the sales tax.

Recently, customers have been requesting that the retailer sell and deliver merchandise to them (the customer), without sales tax, for re-delivery to the customer's shipping company. Several shipping companies have been providing their customers with a "sales tax exemption letter" that advises the retailer that the customer's purchases will be delivered to the shipping company for eventual shipment out of state and that, as a result, sales tax does not apply to the transaction.

Example. A customer comes to your place of business and gives you a letter from his or her shipping company. This letter states that you should not charge sales tax because all purchases are to be delivered to the shipping company for eventual shipment out of state. The customer also provides you with a copy of a bill of lading that advises you that the merchandise will be shipped out of state. The bill of lading lists your name as the consignee and the shipping company's name as the

shipper. Unless you or your representative personally deliver the merchandise directly to the shipping company, for shipment out of state (as per your contract of sale), your sale will be subject to tax.

In summary, for your sale to qualify for an exemption from tax, the merchandise must be shipped to the out-of-state point with:

- Delivery made by your own facilities (for example, using a company-owned vehicle to make the delivery), or
- Delivery by you or your representative to a carrier, customs broker, or forwarding agent, whether hired by you or the purchaser, for shipment to such out-of-state point.

If you would like more information concerning sales of merchandise to be shipped out-of-state, please contact our Customer and Taxpayer Services Division at 1-800-400-7115 and request a copy of Regulation 1620, *Interstate and Foreign Commerce*.

6. Call Us at Our New Toll-Free Number!

We are pleased to announce that the Board has installed a toll-free information number for persons who are calling from within the state. You should note the following numbers for future use:

1-800-400-7115

For TDD assistance (telephone device for the deaf), please call:

From TDD phones:

1-800-735-2929

From voice phones:

1-800-735-2922

Out-of-state callers can reach us at:

916-324-2926

Information Center

Our Information Center is staffed with customer service representatives who can help you with general tax questions. They are available Monday through Friday, 8:00 A.M. to 5:00 P.M., excluding State holidays.

If you need specific information regarding your



account, please call the office that maintains your records. The name and telephone number of the appropriate office is printed on your tax return.

24-Hour Service

You can call the Information Center at any time to order fax copies of commonly requested forms, or you can leave a recorded message to have a document mailed to you.

7. Correction: Application of Tax to Deductibles on Optional Automobile Warranty Contracts

In the June 1994 Tax Information Bulletin we printed an article titled "Application of Tax to Deductibles on Automobile Warranty Contracts." That article incorrectly stated how tax should be prorated between the customer and the manufacturer when the car owner is required to pay a deductible under an optional warranty contract. The following information clarifies how tax applies in that situation and resummaries the application of tax to mandatory and optional warranties.— Editor

Application of Tax — An Overview

How tax applies to charges for repairs completed under a warranty depends on whether the manufacturer or the dealer is obligated to furnish the parts and materials. The information in this article applies to contracts in which the manufacturer is obligated to furnish these items.

In general, a dealer should not collect sales tax reimbursement from the customer for parts that are used for warranty work *unless the customer must pay some amount for the replacement part*. For example, if a dealer replaces a defective tire under a warranty and the customer is required to pay a prorated amount for the new tire, the prorated amount is subject to tax. In addition, if the customer is required to pay a deductible, a portion of that deductible may also be taxable, as explained below.

If a dealer does not charge the customer for warranty parts, tax may apply to the sale of the part to the dealer or to the dealer's use of the part, depending on whether the warranty contract is optional or mandatory.

Mandatory Warranties

When the manufacturer is obligated to furnish parts under a mandatory warranty, the sale of the parts by the dealer to the manufacturer is considered a sale for resale. As a result, tax does not apply to the charges to the manufacturer. If the customer is required to pay a deductible under the contract, a portion of the deductible is subject to tax, as explained below.

To compute the portion of the deductible subject to sales tax, you would divide the billed price for the parts by the total billed price for the repair work, before the deductible, and then multiply the deductible by this ratio.

Example. A customer is required to pay a \$50 deductible under a mandatory warranty. The total charge for the repair work is \$200: \$75 for the parts and \$125 for the labor. The portion of the deductible amount subject to sales tax would be computed as follows: $\$75 \div \$200 = 37.5\%$ x \$50 deductible = \$18.75. Tax would be based on the \$18.75.

Note. If the charge to the manufacturer by the dealer represents only nontaxable labor with no parts or materials furnished, tax would not apply to any portion of the deductible received from the car owner. Additionally, the manufacturer may agree in the mandatory warranty to pay any sales tax liability owed by the car owner as a result of the required deductible.

Optional Warranties

When the manufacturer is obligated to furnish parts under a manufacturer's optional warranty, the manufacturer is considered the consumer for tax purposes. As a result, tax applies to the retail sale of such items to the manufacturer by the dealer. The dealer performing the repairs under the optional warranty is considered the retailer of the parts to the manufacturer and is responsible for reporting sales tax on the retail selling price of the parts (cost plus the markup).

If the optional warranty requires the customer to pay a portion of the bill (for example, the customer is required to pay a deductible) and does not provide that the manufacturer will cover the full cost of reimbursing the dealer for



the sales tax, the dealer must prorate any charges for sales tax reimbursement between the customer and the manufacturer, as explained below. However, if the optional warranty states that the manufacturer will pay the total amount of sales tax reimbursement due, even though the car owner must pay a deductible, the dealer can collect sales tax reimbursement from the manufacturer for the full amount.

Example: A customer is required to pay a \$50 deductible under an optional warranty. The total billed price for the repair work is \$575: \$75 for parts and \$500 for labor. As the retailer, the dealer is liable for tax on the \$75 charge for parts. Assuming a 7.25% sales and use tax rate, the dealer would be liable for \$5.44 in tax on the transaction ($7.25\% \times \$75 = \5.44).

However, because the customer must pay a deductible, the dealer must prorate the charges for sales tax reimbursement between the customer and the manufacturer. To do this, first determine the percentage of the total bill that is subject to tax. In this example, the parts are subject to tax and represent 13% of the total bill ($\$75 \div \$575 = 13\%$).

Since 13% of the total bill is subject to tax, you would calculate the amount of tax reimbursement charged to the car owner based on 13% of the deductible ($13\% \times \$50 = \6.50). The dealer sold the customer \$6.50 in parts. The amount of tax due on \$6.50 is \$0.47 ($\$6.50 \times 7.25\%$). The dealer sold the manufacturer \$68.50 in parts (\$75 less the customer's pro-rata purchase of \$6.50). The manufacturer's share of the tax reimbursement would be \$4.97 ($\$68.50 \times 7.25\%$) or (\$5.44 total tax due less the customer's pro-rata share of the tax reimbursement of \$0.47).

Note: It is not necessary to prorate the charges if the optional warranty contract stipulates that the manufacturer will pay the total amount of sales tax reimbursement due. If the charge to the manufacturer by the dealer represents only nontaxable labor with no parts or materials furnished, tax would not apply to any portion of

the deductible received from the car owner.

We apologize for any confusion the June 1994 article may have created. If you need additional information, please contact your local Board office.

8. Do You Need To Collect the Tire Recycling Fee?

If you sell new or used tires and accept tires that are left with you for disposal, you are required to collect a twenty-five cent (\$0.25) recycling fee for each tire. The fee applies to all tires that are placed at your disposal, including tires to be retreaded and/or reused, tires with remaining useful lives and value, and tires left as trade-ins. If you are required to report this fee and need to register, please call the Excise Taxes Division at 916-322-9651. If you are required to register and do not, you are subject to fines and penalties.

9. Do You Need To Verify a Seller's Permit?

When accepting resale certificates, a retailer may question whether the permit listed on the certificate is current. To help ensure that a seller's permit is valid, the Board has established a telephone verification service. The service is available Monday through Friday, except State holidays, from 8:30 A.M. to 4:30 P.M.

When you call one of the numbers listed below, you will be asked to provide the number of the permit to be verified and the name and business address of the purchaser. To accommodate as many callers as possible, no more than three permit numbers may be verified at one time. Additional information cannot be given.

Oakland area:	510-286-1260
San Jose area:	408-277-1003
Sacramento area:	916-324-2397
Santa Ana area:	714-558-4296
San Diego area:	619-525-4532
Van Nuys area:	818-901-5525



10. New or Revised Reference Material

To obtain a copy of one of the following documents, please call 1-800-400-7115 (if you are calling from out of state, call 916-324-2926). Or write to: Board of Equalization, Supply Unit, 3920 West Capitol Avenue, Suite 200, West Sacramento, CA 95691. The FAX number for the Supply Unit is 916-372-6078.

Regulations

- 2550 Destruction and Unaccounted for Losses of Distilled Spirits (effective December 29, 1995)
- 2551 Unaccounted for Losses of Beer (effective January 1, 1996)
- 2552 Spoiled Beer and Exemption Credit (effective March 8, 1996)
- 1501.1 Research and Development Contracts (effective March 22, 1996)
- 1630 Packers, Loaders, and Shippers (effective January 12, 1996)

Revised Pamphlets

- 27 Tax Tips for Drug Stores (January 1996)
- 29 Property Tax: An Overview for Policy Makers (January 1996)
- 32 Tax Tips for Sales to Purchasers from Mexico (January 1996)
- 71 California City and County Sales and Use Tax Rates (April 1996)
- 84 Use Fuel Permit Requirements (February 1996)

Law Pamphlets (all dated January 1996)

- 1 Sales and Use Tax Law
- 2 Uniform Local Sales and Use Tax, Transaction and Use Tax Law, and Additional Taxes
- 3 Use Fuel Tax Law
- 4 Cigarette Tax Law
- 5 Alcoholic Beverage Tax Law
- 6 Motor Vehicle Fuel License Tax Law

- 7 Tax on Insurers Law
- 10 Energy Resources Surcharge Law
- 19 Diesel Fuel Tax Law
- 20 Emergency Telephone Users Surcharge Law
- 49 Underground Storage Tank Maintenance Fee Law
- 59 Local Motor Vehicle Fuel Taxation Law
- 60 Hazardous Substance Tax Law
- 69 Integrated Waste Management Fee Law
- 83 Tire Recycling Fee Law
- 85 Oil Recycling Fee Law